

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS LANDREAUX and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Long Beach, Calif.

*Docket No. 97-2209; Submitted on the Record;
Issued April 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs' denial of appellant's request for a hearing pursuant to section 8124 of the Federal Employees' Compensation Act constituted an abuse of discretion; and (2) whether the Office's denial of appellant's request for reconsideration pursuant to section 8128 of the Act constituted an abuse of discretion.

This case has previously been on appeal before the Board. By decision and order dated May 22, 1996, the Board affirmed the Office's decisions dated November 4 and December 14, 1992 and April 27, 1993 in which it terminated appellant's compensation effective November 4, 1992. The facts and circumstances of the case are completely set out in those decisions and are hereby incorporated by reference.¹

By letter dated June 27, 1996 to the Office, appellant requested reconsideration of the Board's decision and requested an oral hearing in the matter. By decision dated August 1, 1996, the Office denied appellant's request for a hearing as beyond its scope of review and indicated that appellant could request modification of the Office's decision by submitting valid evidence together with her request. In decisions dated September 18, 1996 and May 27, 1997, the Office denied appellant's request for reconsideration on the grounds that the former request was *prima facie* insufficient to warrant review and the evidence submitted with the second request was not sufficient to warrant review of the prior decision.

¹ Docket No. 93-2067 (issued May 22, 1996).

The Board has duly reviewed the entire case record on appeal and finds that the Office properly denied appellant's request for a hearing.²

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."³ As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁴ However, the implementing regulations provide the following guidelines relevant to this issue:

"Final decisions of the Office ... are subject to review by the Employees' Compensation Appeals Board (ECAB), U.S. Department of Labor, under rules of procedure set forth in part 501 of this title;⁵ and

"The decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board."⁶

Thus, as the Office indicated, the decision by the Board was not subject to a hearing before an Office hearing representative or review by the Office as said decision could only be reviewed by the Board. Consequently, the Office properly denied appellant's request for a hearing pursuant to the Act and implementing regulations.

The Board also finds that the Office properly denied appellant's August 21, 1996 request for reconsideration by its decision dated September 18, 1996; however, the case is not in posture for review with respect to the Office's May 27, 1997 decision.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁷ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on May 1, 1997, the only decisions before the Board are the Office's May 27, 1997, September 18 and August 1, 1996 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 5 U.S.C. § 8124(b)(1).

⁴ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

⁵ 20 C.F.R. § 10.139.

⁶ 20 C.F.R. § 501.6.

⁷ 20 C.F.R. § 10.138(b)(2).

and does not constitute a basis for reopening a case.⁸ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹

In her request for reconsideration dated August 21, 1996, appellant noted her disagreement with the determination of the Office but did not submit any evidence or advance any point of law or fact not previously considered by the Office. Accordingly, appellant has not provided a sufficient evidentiary or legal basis for reopening her claim, and the Office properly employed its discretion in refusing to reopen the case for further review of the merits.¹⁰

Subsequently, appellant requested reconsideration by letters dated September 25, 1996 and April 30, 1997 and submitted evidence she believed substantiated her claim. This evidence included a report dated March 12, 1997 by Dr. Michael Accord and an addendum to that report dated May 2, 1997. A review of the record indicates that on May 20, 1997 appellant submitted the addendum to Dr. Accord's report which the Office did not recognize in its May 27, 1997 decision denying merit review of appellant's claim. A review of the record indicates that this evidence had not been previously submitted and considered by the Office. The Board has held that it is crucial that all relevant evidence properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.¹¹ Consequently, the case is remanded for review of the relevant evidence and an appropriate decision after such review.

⁸ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁹ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁰ See *John F. Critz*, 44 ECAB 788 (1993); *Jimmy O. Gilmore*, 37 ECAB 257 (1985).

¹¹ *William A. Couch*, 41 ECAB 548 (1990).

The decisions of the Office of Workers' Compensation Programs dated September 18 and August 1, 1996 are affirmed, the decision of the Office dated May 27, 1997 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
April 26, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member